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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,994	06/08/2001	Bruno Biatry	208594US0	8350

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EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
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1619

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DATE MAILED: 12/05/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Applicati n N .

09/875,994

Applicant(s)

BIATRY, BRUNO

Examiner

Gina C. Yu

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

### P r i d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disp sition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Pri rity under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Objections***

Claim 35 is objected to under 37 CFR 1.75(b), as being a duplicate of claim <sup>32</sup>~~33~~.

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Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

1. Claims 1-36 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Ribier et al. (U.S. Pat. No. 6,207,694 B1) (“Ribier”).

Ribier discloses compositions for skin, where in an oily phase, stabilized by cubic gel particles formed of phytanetriol, is dispersed in an aqueous phase. See col. 1, lines 7-13. Since the reference teaches topically applying the said composition, wherein the amount of the phytanetriol used there also meets the claimed “effective amount” of the phytanetriol in the instant application, examiner views that Ribier’s composition inherently performs the same functions that is claimed by the applicant, i.e., protecting skin from pollutants and treating dry

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skin. Thus instant claims 1 and 23-25 are met. The reference further discloses the specific limitations of instant claims 7-22, 27, and 30. Claim 36 is met by the disclosure in col. 1, line 66 – col. 2, line 18.

2. Claims 1-3, 5, 6, 15, 17-19, , 21, 23-27, 28, 30, 31, 32, and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Ribier et al. (U.S. Pat. No. 5,834,018) ('018).

'018 teaches aqueous composition of cubic gel particles based on 0.1-15% by weight of phytanetriol which is effective in hydrating skin. See abstract. Since the disclosed composition also meets the limitations of the claimed invention and is used for topical application, examiner views that the claimed property of the composition (protecting the skin from pollutants) is inherently present in the prior art.

3. Claims 1-4, 23-26, 28, 29, 31-33, and 35 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Murad (U.S. Pat. No. 6,207,694 B1).

Murad discloses composition for prevention and treatment of hair and scalp condition comprising phytanetriol. See abstract; Examples 2, 3, 5, and 7-9. The use of the composition encompasses reducing hair and scalp damages from exposure to pollution or overdrying, meeting instant claims 1, 23, 24, and 25. See col. 5, lines 5 – 12; 9, lines 17 – 21. Examples 2, 3, 5, and 7-9 illustrate formulations comprising phytanetriol in the amount of 0.02 – 0.3 % by weight of the total composition, which meets instant claims 2 and 3. The formulas are also homogenous mixture of oil and aqueous phases, and thus instant claims 4, 26, and 29 are met. Examples 5, 7, and 8 are directed to scalp formulation, which meets instant claims 28, 31, 32, and 35.

4. Claims 1-4, 23, 24, 26, and 29 are rejected under 35 U.S.C. § 102 (a) and (e) as being anticipated by Bergmann (U.S. Pat. No. 6,110,450).

Bergmann teaches composition for the treatment and protection of hair, comprising glycoceramide and phytanetriol. See abstract. The term "protection" in the reference includes the protection of the hair fibers from the harmful agents from unsuitable hair treatments (and inclement weather). See col. 1, line 17 - 26. Examiner views that applicant's broad definition of pollutant, which include gases or "heavy metals", encompasses the harmful metal agents from the hair treatment products. See spec. p. 2, lines 22-24. Examples 1 and 2 show emulsion formulations comprising phytanetriol in the amount of 0.1 % by weight of the total composition, meeting instant claims 2-4, 26, and 29.


### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. JP 61236737 A, abstract (teaching phytanetriol is known to provide protection action for skin and hair).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-305-3593.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana Dudash can be reached on 703-308-2328.

Gina C. Yu  
Patent Examiner  
November 29, 2001



DIANA DUDASH  
SUPERVISORY PATENT EXAMINER  
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